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NO. 94-1014

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

MIKE M. NDEFRU,

PETITIONER,

VS.

DR. PETER M.A. SHERWOOD, DR. DALE M. HAWLEY, DR. KENNETH J. KLABUNDE, DR. MICHAEL J. O'SHEA, DEAN TIMOTHY R. DONOGHUE, DEAN BRADLEY FENWICK, DEAN ELIZABETH A. UNGER,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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NO VALID ARGUMENTS PRESENTED AGAINST GRANTING PETITION

1. Questions presented need no modification

The respondents' attorney gave no reason for being dissatisfied with the petitioner's questions presented (Resp. Brf. Opstn. at (i)). The attorney only stated her/his desire. Just being dissatisfied is not a reasonable basis for altering or rejecting the petitioner's "QUESTIONS PRESENTED".

The attorney's question presented support granting of the petition. Basis for associating due process with rejection should be established. Among other issues, the reasonableness of conducting a search of an office just by claiming to have lent or by lending an

item associated with academics needs to be shown.

2. Unsubstantiated claim of confusion and inaccuracies

The respondents' attorney gave no example of her/his claim that the petitioner's reproduction of the opinions of the courts below "contains numerous inaccuracies" (Resp. Brf. Opstn. at 1).

The attorney, without giving examples, also claimed the petitioner's statements are "confusing and replete with inaccuracies" (Resp. Brf. Opstn. at 8).

The petitioner perceives the attorney's claims as fabrications with the intention to evade responding to issues raised by the petitioner. The attorney's opinions support that the Supreme Court review this case. The

petition should be granted.

3. Supreme Court has jurisdiction

The respondents' attorney questions the jurisdiction of the Supreme Court over this case (Resp. Brf. Opstn. at 6, 7, 15 & 16).

The petitioner states that the Supreme Court has jurisdiction over this case based on (1) Rules 10.1(a) and 10.1(c) of the Supreme Court, and (2) on the fact that the petitioner's claim is a 42 U.S.C. § 1983 claim, that protects the petitioner's constitutional rights. Constitutional and statutory provisions appear in the petition (Petn. Wrt. at 4; Appen. Petn. Wrt. at 94 to 96).

A. The district court and the 10th Cir. have failed to administer justice in this case. The petitioner's 42 U.S.C. § 1983 claim has not be resolved. The Supreme Court is the

"next stage" for the redress of the petitioner's 42 U.S.C. § 1983 claim. Supreme Court Rule 14.1(e)(iv) is met. The Supreme Court has jurisdiction over this case.

B. In the respondents' attorney's arguments regarding Rules 10.1(a) and 10.1(c) -- Resp. Brf. at 6, 7 & 16 -- she/he left out the following: "When a United States court of appeals ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision" (Part of Supreme Court Rule 10.1(a)). The attorney's presentation of Supreme Court Rule 10.1(a) is evidence of deliberate omission, misstatement and evasion of facts in this case. The presentation also brings to question the attorney's claim that

she/he accurately reproduced the opinions of the courts below in the respondents' brief in opposition, and that the petitioner's reproduction of the opinions of the courts below has "numerous inaccuracies" (Resp. Brf. Opstn. at 1). The petition should be granted. The Supreme Court has jurisdiction.

C. The Supreme Court also has jurisdiction pursuant to Rule 10.1(c) of the Supreme Court.

(i) Even in temporary suspension, due process is required. In Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975), "The Supreme Court without hearing held that students facing temporary suspensions from a public school have property and liberty interest and are protected by the Due Process Clause of the Fourteenth Amendment. Students faced with such

potential losses of liberty must be given oral or written notices of the charges against them along with the opportunity at a hearing to present their version of what happened."

If students facing temporary suspension have the right to due process, dismissal of the petitioner from his career pursuit in Surface Science at Kansas State University (K.S.U.) required due process.

(ii) Should the petitioner's Fourth Amendment claim be tried in the federal courts? Yes.

a. The search of the petitioner's belongings in his office was unreasonable. In New Jersey v. T.L.O, 469 U.S. 325 (1985), the court held that the Fourth Amendment prohibits unreasonable searches by public school officials (Petn. Wrt. at 51 & 97). The petitioner holds that the Fourth

Amendment would be worthless in an academic setting if just lending or claiming to have lent an item associated with academics is justifiable reason to conduct a search of an office. The unreasonable search needs to be addressed by the Supreme Court.

b. The district court claimed that the petitioner cold not show that Respondent Sherwood was acting as a government official, in the search (Petn. Wrt. at 50 & 87). Discovery was stayed (Petn. Wrt. at 50 & 88).

The lower courts ignored the fact that K.S.U. and the Chemistry Department of K.S.U. benefit from the funds associated with Respondent Sherwood's research. Respondent Sherwood was therefore a government official when he searched the petitioner's belongings for the claimed research papers. This issue should be reviewed by the Supreme Court.

The lower courts also ignored the fact that aspects of Respondent Sherwood's research publications have been used in students' dissertations, K.S.U. functions. Respondent Sherwood was a government official when he conducted the search. This issue needs to be addressed by the Supreme Court.

The lower courts ignored the fact that the petitioner had previously told Respondent Sherwood that the petitioner had a book that could prove violations regarding the treatment of his proposal, a K.S.U. function. The lower courts ignored the fact that Respondent Sherwood was a government official when he searched the petitioner's office for the claimed nickel research papers. Reasonably a government official is not deemed a "private person" (Petn. Wrt. at 86) just for the purpose of dismissing a Fourth Amendment claim. Rule 10.1(c)

should stand.

(iii) The district court, ignoring to establish fairness in respondents' actions, cited Newman v. Burgin, 930 F.2d 955, 960 (1st Cir. 1991). The court stated that no "specific set of detailed procedures" need to be followed as long as procedures followed are fair (Petn. Wrt. at 83 & 84). The district court failed (1) to consider regulations, and (2) to establish fairness in the procedures followed by respondents. Such failure indicates that the court's statement about regulations and fairness are in conflict with the 1st Cir.'s opinion, in the Newman case, cited by the district court. The district court failed to apply the opinion of the 1st Cir. to the petitioner's case.

The district court's approach to

regulations also conflict with the opinions of state courts of Kansas. state courts of Kansas have acknowledged the importance of regulations, and adherence to regulations have been considered in the granting of immunity (Petn. Wrt. at 15, 16, 98, 99).

The lower courts' failure to consider regulations conflict with the Supreme Court's consideration of adherence to established rules in Board of Curators, Univ. of Mo. v. Horowitz, 435 U.S. 78 (1978) (Petn. Wrt. at 18).

Violations of regulations and absence of fairness in respondents' actions contributed to the destruction of the petitioner's career pursuit. The Supreme Court has jurisdiction to settle the conflict regarding regulations and fairness. Reasonably, regulations are not only important when they favor the granting of immunity (Petn. Wrt. at 15,

16 & 98 to 99), and when they favor dismissal of a case. Fairness cannot be demonstrated in respondents' actions. The conflict regarding regulations and fairness needs to be addressed. The petition should be granted.

4. No basis for claiming violation of Rule 14 of the Supreme Court

The respondents' attorney gave no example to support the attorney's claim of lack of "accuracy, brevity, or clearness" in the petition for the writ (Resp. Brf. Opstn. at 7 & 17). Also, the use of "or" -- not "and", for example -- by the attorney indicates uncertainty in the attorney's statement. The attorney has failed to support her/his claims of violation of Rule 14 of the Supreme Court.

5. Association of due process with rejection and disagreement still unsubstantiated

The respondents' attorney failed to show the basis for (1) the attorney's, (2) the district court's, and (3) the 10th Cir.'s claim that the petitioner associated due process with rejection (Petn. Wrt. at 11 & 13; Resp. Brf. Opstn. at (i) & 3; Appen. Petn. Wrt. at 57 & 64). Dismissal of the petitioner was ignored.

The attorney also failed to show the basis for associating due process with disagreement (Petn. Wrt. at 12).

This problem of association needs to be addressed. The petition should be granted.

6. Association of property and liberty interest with approval of a topic still unsubstantiated

The respondents' attorney failed to show the basis of the district court's association of property and liberty interest with approval of a proposed oral topic (Petn. Wrt. at 13 & 82).

The attorney simply restated opinions of the courts below and evaded addressing the petitioner's arguments regarding the opinions.

It is common understanding that courts have a commitment to administer justice, not a commitment to dismiss a case. A case cannot be justifiably dismissed on false claims.

The petition should be granted. Bases for the due-process, and property-and-liberty-interest statements need to be established.

7. Valid basis for qualified immunity claim still unestablished

The respondents' attorney has failed to resolve the contradiction between her/his claim to the 10th Cir. that the respondents are entitled to qualified immunity and her/his claim that the district court was right in dismissing the case. The attorney also failed to state why it was not clear at the time of respondents' violations that respondents were violating the petitioner's constitutional rights (Petn. Wrt. at 38 & 39). The 10th Cir. ignored the admission of guilt. The Supreme Court has the authority to review the opinions of the lower courts in this case. The petition should be granted.

On the whole, the respondents' attorney has failed to raise any valid

arguments against granting of the petition. The attorney has simply restated opinions of the lower courts, opinions which require that records of the lower courts be reviewed to enable the Supreme Court to have proper knowledge of the facts involved in this case. A rational decision can only be made through the acquisition of proper knowledge of the facts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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